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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

PG&E CORPORATION,

- and -

PACIFIC GAS AND ELECTRIC
COMPANY,

Debtors.

- ☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric Company
☒ Affects both Debtors
** All papers shall be filed in the Lead Case,
No. 19-30088 (DM).*

Case No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

**ARBORMETRICS SOLUTIONS, LLC'S
OBJECTION AND RESERVATION OF
RIGHTS RE ASSUMPTION OF
PURPORTED EXECUTORY
CONTRACTS PURSUANT TO THE
PLAN AND PROPOSED CURE
AMOUNTS**

Related Docket No. 7037

ArborMetrics Solutions, LLC ("ArborMetrics") objects to the proposed assumption of any purported executory contracts entered into between ArborMetrics and Pacific Gas and Electric Company (the "Utility"), and reserves all rights. As grounds therefor, ArborMetrics respectfully states as follows:

1 1. The captioned debtors (“Debtors”) filed voluntary chapter 11 petitions on January 29,
2 2019 (“Petition Date”).

3 2. Prepetition, ArborMetrics provided various services to the Utility in connection with
4 the Utility’s operations (the “Pre-petition Services”).

5 3. ArborMetrics has filed a general unsecured proof of claim against the Utility in the
6 amount of \$27,154.47 for amounts due and owing in connection with the Pre-Petition Services,
7 assigned Claim No. 8074 (the “Pre-Petition Services Claim”).¹

8 4. In addition, ArborMetrics has filed a contingent, unliquidated general unsecured proof
9 of claim against the Utility for, inter alia, indemnity and contribution related to the Pre-Petition
10 Services, assigned Claim No. 97050, as amended (the “Indemnity Claim”).

11 5. On May 1, 2020, the Debtors filed their Notice of Filing of Plan Supplement in
12 Connection with Debtors’ and Shareholder Proponents’ Joint Chapter 11 Plan of Reorganization Dated
13 March 16, 2020 [Dkt #7037] (“Plan Supplement”).

14 6. Exhibit B to the Plan Supplement is entitled “Schedule of Executory Contracts and
15 Unexpired Leases to be Assumed Pursuant to the Plan and Proposed Cure Amounts” (“Exhibit B
16 Schedule”).

17 7. The Exhibit B Schedule states that any proofs of claim related to any purported
18 executory contracts that the Debtors assume – including any claims for contractual indemnification
19 related to such contracts – will be deemed disallowed as of the plan’s effective date.

20 8. In particular, paragraph 8 of the Exhibit B Schedule provides, in part, that “[o]n the
21 Effective Date of the Plan, any proofs of Claim filed with respect to an executory contract or unexpired
22 lease that has been assumed, or assumed and assigned, under the Plan ***shall be deemed disallowed and***
23 ***expunged, without further notice to or action, order, or approval of the Bankruptcy Court.***”
24 (emphasis added)

25 9. Paragraph 13 of the Exhibit B Schedule, in turn, provides, “Except as set forth in
26 Section 8.4 of the Plan with respect to the D&O Indemnity Obligations, the assumption by the Debtors

27 ¹ Further information concerning the Pre-Petition Services can be found in the Rider attached to the Pre-Petition Services
28 Claim.

1 or Reorganized Debtors, as applicable, of all other executory contracts or unexpired leases pursuant
2 to the Plan shall result in the full release and satisfaction of any and all contingent pre-petition
3 indemnification obligations arising under the terms of any such agreements and ***any proof of Claim***
4 ***premised on a pre-petition contractual indemnification obligation alleged to be owed by the Debtors***
5 ***or Reorganized Debtors shall be deemed disallowed and discharged on the Effective Date, without***
6 ***further notice to or action, order, or approval of the Bankruptcy Court.***” (emphasis added)

7 10. Among the purported executory contracts entered into with the Utility, as listed in the
8 spreadsheet attached to the Exhibit B Schedule, is the following:

- 9 • Under “ArborMetrics Solutions, Inc.,” a “Contract Work Authorization – Attachment
10 C – Sample CWA” with a proposed cure amount of \$0.00

11 11. Moreover, paragraph 5 to the Exhibit B Schedule states that even if a counter-party to
12 a purported executory contract is not listed in the spreadsheet, the party may still have one or more
13 contracts subject to assumption pursuant to the Exhibit B Schedule:

14 As a matter of administrative convenience, in certain instances the Debtors may have
15 listed the original parties to certain of the Agreements listed in the Schedule of
16 Assumed Contracts without taking into account any succession of trustees or any other
17 transfers or assignments from one party to another. ***The fact that the current parties***
to any particular Agreements may not be named in the Schedule of Assumed
Contracts is not intended to change the treatment of such Agreements.”

18 (emphasis added)

19 12. It is unknown whether the Debtors contend that ArborMetrics is listed under some other
20 name, per paragraph 5 of the Exhibit B Schedule.

21 13. Notwithstanding the purported executory contract between “ArborMetrics Solutions,
22 Inc.” and the Utility, as listed in the Exhibit B Schedule, ArborMetrics did not have any executory
23 contracts with the Utility as of the Petition Date. All contracts entered into between ArborMetrics and
24 the Utility had been terminated prior to the Petition Date.²

25 14. Accordingly, there are no executory contracts between ArborMetrics and the Utility for
26 the Debtors to assume.

27 ² Robert E. Richens, Jr., Vice President of ArborMetrics, signed ArborMetrics’ proofs of claim, and can provide
28 evidence in support of this objection, as necessary.

1 15. Assuming for argument's sake that there is one or more executory contracts between
2 ArborMetrics and the Utility subject to assumption through the Exhibit B Schedule – including any
3 “hidden” contract that may be listed under the name of some other entity, then (i) the appropriate cure
4 amount is the full amount of the Prepetition Services Claim, and (ii) the Indemnity Claim should not
5 be disallowed.

6 16. As to this latter point, a counter-party to an executory contract should not lose its
7 contractual indemnity rights when the Debtors assume the contract. Indeed, if the Debtors assume a
8 contract, then the counter-parties should have the benefit of all rights that they are entitled to under
9 the contract. Accordingly, assuming there is an executory contract with ArborMetrics subject to
10 assumption, ArborMetrics should not lose the benefit of the Indemnity Claim.

11 17. ArborMetrics files this objection as a protective measure to preserve all rights and
12 remedies, including, but not limited to, the right to payment in full of the Pre-Petition Services Claim
13 (whether as a cure claim or a prepetition claim) and preservation of the Indemnity Claim.

14 18. Moreover, ArborMetrics reserves all of its rights, claims, defenses, and remedies
15 regarding the Exhibit B Schedule, including the right to amend, modify, or supplement this Objection.
16 Nothing in this Objection should be construed as a release or waiver of any claim, right, or remedy
17 that ArborMetrics has under the Bankruptcy Code or other applicable law.

18 **WHEREFORE**, for the reasons stated above, ArborMetrics objects to the assumption of any
19 purported executory contract that the Debtors contend exist between ArborMetrics and the Utility, and
20 reserves all rights.

21 Dated: May 15, 2020

DUANE MORRIS LLP

23 By: /s/ Geoffrey A. Heaton (206990)

24 GEOFFREY A. HEATON
25 Attorneys for ARBORMETRICS
26 SOLUTIONS, LLC
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